

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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BILL DRAFT 2011-LL-173 [v.7] (04/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

4/11/2012 10:02:46 AM

Short Title: Justice Reinvestment Clarifications.

(Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE JUSTICE REINVESTMENT
ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 15A-1343.2(e) reads as rewritten:

"(e) Delegation to Probation Officer in Community Punishment. — Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender sentenced to community punishment to do any of the following:

- (1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision.
- (2) Report to the offender's probation officer on a frequency to be determined by the officer.
- (3) Submit to substance abuse assessment, monitoring or treatment.
- (4) Submit to house arrest with electronic monitoring.
- (5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.
- (6) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored electronically.
- (7) Participate in an educational or vocational skills development program, including an evidence-based program.

If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to subsection (e) of this section after administrative review and approval by a Chief Probation Officer. The offender may file a motion with the court to review the action taken by the



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1 probation officer. The offender shall be given notice of the right to seek such a court review.
2 However, the offender shall have no right of review if he or she has signed a written waiver of
3 rights as required by this subsection. The Section may exercise any authority delegated to it
4 under this subsection only if it first determines that the offender has failed to comply with one
5 or more of the conditions of probation imposed by the court or the offender is determined to be
6 high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the
7 condition at subdivision (5) of this subsection may not be imposed unless the Section
8 determines that the offender failed to comply with one or more
9 of the conditions imposed by the court. Nothing in this section shall be construed to limit the
10 availability of the procedures authorized under G.S. 15A-1345.

11 The Division shall adopt guidelines and procedures to implement the requirements of this
12 section, which shall include a supervisor's approval prior to exercise of the delegation of
13 authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5)
14 of this subsection, the probationer must first be presented with a violation report, with the
15 alleged violations noted and advised of the right (i) to a hearing before the court on the alleged
16 violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the
17 hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses
18 who have relevant information concerning the alleged violations; and (iv) to examine any
19 witnesses or evidence. ~~Upon the signing of a waiver of rights by the probationer, with both the~~
20 ~~probation officer and a supervisor signing as witnesses, the~~ The probationer may be confined
21 for the period designated on the violation report. report upon the execution of a waiver of rights
22 signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be
23 the probation officer and another officer to be designated by the Chief of the Community
24 Corrections Section in written Division policy."

25 **SECTION 1.(b)** G.S. 15A-1343.2(f) reads as rewritten:

26 "(f) Delegation to Probation Officer in Intermediate Punishments. — Unless the
27 presiding judge specifically finds in the judgment of the court that delegation is not appropriate,
28 the Section of Community Corrections of the Division of Adult Correction of the Department
29 of Public Safety may require an offender sentenced to intermediate punishment to do any of the
30 following:

- 31 (1) Perform up to 50 hours of community service, and pay the fee prescribed by
32 law for this supervision.
- 33 (2) Submit to a curfew which requires the offender to remain in a specified
34 place for a specified period each day and wear a device that permits the
35 offender's compliance with the condition to be monitored electronically.
- 36 (3) Submit to substance abuse assessment, monitoring or treatment.
- 37 (4) Participate in an educational or vocational skills development program,
38 including an evidence-based program.
- 39 (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of
40 Chapter 14 of the General Statutes, if the defendant is described by
41 G.S. 14-208.40(a)(2).
- 42 (6) Submit to a period or periods of confinement in a local confinement facility
43 for a total of no more than six days per month during any three separate
44 months during the period of probation. The six days per month confinement
45 provided for in this subdivision may only be imposed as two-day or
46 three-day consecutive periods. When a defendant is on probation for
47 multiple judgments, confinement periods imposed under this subdivision
48 shall run concurrently and may total no more than six days per month.
- 49 (7) Submit to house arrest with electronic monitoring.
- 50 (8) Report to the offender's probation officer on a frequency to be determined by
51 the officer.

1 If the Section imposes any of the above requirements, then it may subsequently reduce or
2 remove those same requirements.

3 The probation officer may exercise authority delegated to him or her by the court pursuant
4 to subsection (f) of this section after administrative review and approval by a Chief Probation
5 Officer. The offender may file a motion with the court to review the action taken by the
6 probation officer. The offender shall be given notice of the right to seek such a court review.
7 However, the offender shall have no right of review if he or she has signed a written waiver of
8 rights as required by this subsection. The Section may exercise any authority delegated to it
9 under this subsection only if it first determines that the offender has failed to comply with one
10 or more of the conditions of probation imposed by the court or the offender is determined to be
11 high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the
12 condition at subdivision (6) of this subsection may not be imposed unless the Section
13 determines that the offender failed to comply with one or more of the conditions imposed by
14 the court. Nothing in this section shall be construed to limit the availability of the procedures
15 authorized under G.S. 15A-1345.

16 The Division shall adopt guidelines and procedures to implement the requirements of this
17 section, which shall include a supervisor's approval prior to exercise of the delegation of
18 authority authorized by this section. Prior to imposing confinement pursuant to subdivision (6)
19 of this subsection, the probationer must first be presented with a violation report, with the
20 alleged violations noted and advised of the right (i) to a hearing before the court on the alleged
21 violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the
22 hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses
23 who have relevant information concerning the alleged violations; and (iv) to examine any
24 witnesses or evidence. ~~Upon the signing of a waiver of rights by the probationer, with both the~~
25 ~~probation officer and a supervisor signing as witnesses, the~~ The probationer may be confined
26 for the period designated on the violation report. report upon the execution of a waiver of rights
27 signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be
28 the probation officer and another officer to be designated by the Chief of the Community
29 Corrections Section in written Division policy."

30 **SECTION 2.** G.S. 15A-1344 reads as rewritten:

31 "(d2) Confinement in Response to Violation. — When a defendant under supervision for
32 a felony conviction has violated a condition of probation other than G.S. 15A-1343(b)(1) or
33 G.S. 15A-1343(b)(3a), the court may impose a 90-day period of ~~confinement for a defendant~~
34 ~~under supervision for a felony conviction or a period of confinement of up to 90 days for a~~
35 ~~defendant under supervision for a misdemeanor conviction. confinement.~~ The court may not
36 revoke probation unless the defendant has previously received a total of two periods of
37 confinement under this subsection. A defendant may receive only two periods of confinement
38 under this subsection. If the time remaining on the ~~defendant's~~ maximum imposed sentence on
39 a defendant under supervision for a felony conviction is 90 days or less, then the term of
40 confinement is for the remaining period of the sentence. Confinement under this section shall
41 be credited pursuant to G.S. 15-196.1.

42 When a defendant under supervision for a misdemeanor conviction has violated a condition
43 of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a
44 period of confinement of up to 90 days. The court may not revoke probation unless the
45 defendant has previously received a total of two periods of confinement under this subsection.
46 A defendant may receive only two periods of confinement under this subsection. Confinement
47 under this section shall be credited pursuant to G.S. 15-196.1.

48 If a defendant is arrested for violation of a condition of probation and is lawfully confined
49 to await a hearing for the violation, then the judge shall first credit any confinement time spent
50 awaiting the hearing to any confinement imposed under this subsection; any excess time shall
51 be credited to the activated sentence. The period of confinement imposed under this subsection

on a defendant who is on probation for multiple offenses shall run concurrently on all cases related to the violation. Confinement shall be immediate unless otherwise specified by the court.

A defendant shall serve any confinement imposed under this subsection in the correctional facility where the defendant would have served an active sentence."

SECTION 3. G.S. 15A-1343(a1) reads as rewritten:

"(a1) Community and Intermediate Probation Conditions. — In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

- (1) House arrest with electronic monitoring.
- (2) Perform community ~~service.~~ service and pay the fee prescribed by law for this supervision.
- (3) Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.
- (4) Substance abuse assessment, monitoring, or treatment.
- (5) Participation in an educational or vocational skills development program, including an evidence-based program.
- (6) Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2)."

SECTION 4. This act is effective when it becomes law.